



The Arms Trade Treaty

Countering myths and misperceptions

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Preface

In December 2006 an overwhelming majority of states (153) voted in favour of UN General Assembly Resolution 61/89 establishing a UN consultation process towards an Arms Trade Treaty (ATT). Subsequently, in 2007, more than 100 submissions were presented to the UN Secretary General regarding the feasibility, scope and draft parameters of an ATT, the vast majority of which supported the idea of such an agreement. Resolution 61/89 also mandated a Group of Governmental Experts (GGE) to explore the same set of issues. The subsequent GGE Report¹ acknowledged “the importance of objective and agreed global criteria that reflect respective responsibilities of exporters and importers” (para 19) and referred inter alia to a long list of “necessary conditions for transfers” (para 25). It also recommended that the ATT process continue within the UN.

On 22 December 2008, a second ATT Resolution 63/240 was passed overwhelmingly in the UN General Assembly. This endorsed the GGE Report and, importantly, mandated the establishment of an Open Ended Working Group to “further consider those elements in the report of the Group of Governmental Experts where consensus could be developed for their inclusion in an eventual legally binding treaty on the import, export and transfer of conventional arms”.

There is every possibility that, with the overwhelming support of UN member states, the ongoing discussions on the substance of an ATT will facilitate the development of consensus on key issues such as scope, draft parameters and monitoring and verification mechanisms, leading to the establishment of an effective legally binding Treaty on the control of international arms transfers.

¹ Report of the Group of Governmental Experts to examine the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms, 26 August 2008 <http://daccessdds.un.org/doc/UNDOC/GEN/N08/491/10/PDF/N0849110.pdf?OpenElement>

To this end, this document seeks to dispel some of the myths and misperceptions that have been raised in ATT discussions at the UN and elsewhere. By producing this document the organisations involved hope to contribute further to an informed debate on the ATT within the UN system and ultimately to increase the prospects of a successful conclusion to the ATT process that fully reflects states' existing obligations under national and international law.

The Arms Trade Treaty

Countering myths and misperceptions

SOME STATES SAY...

Ambiguity or differences in the interpretation of the transfer criteria in an ATT cannot be avoided and will undermine the agreement.

WE SAY...

An effective ATT would include provisions for information exchange and consultation between states and would establish clear, universal standards and methods for assessing transfers.

Differences in the interpretation of ATT transfer criteria should be avoided by establishing a requirement that potential recipient states are assessed according to persistent patterns of behaviour rather than isolated incidents or perceived intentions. The ATT should also establish that the methods by which states assess risks associated with particular international arms transfers should be based upon credible evidence that can be shared among relevant state authorities.

The ATT should also involve the establishment of appropriate structures and processes for the reporting, consultation, monitoring and verification of compliance, and adjudication and dispute settlement. Such provisions will be essential in order to ensure that states can support each other in executing their responsibilities under the Treaty.

SOME STATES SAY...

The concepts of human rights and sustainable development are too subjective and should not be included in an ATT.

An ATT should focus on the illicit trade and should not interfere with the legal trade.

WE SAY...

All states are bound by international legal obligations to preserve human rights and promote sustainable development. The vast majority of states recognise this and want an ATT that reflects these obligations.

The human rights criterion of the ATT should reflect the universal human rights standards that states have already adopted through the UN Charter, global human rights treaties and customary law. These rights, such as the right not to be arbitrarily killed, or tortured or forcibly displaced, are so fundamental that an ATT would be meaningless without protecting them. International transfers of conventional arms would be stopped if there was a substantial risk that the specific transfer in question would be used in serious violations of international human rights law.²

Many states also recognise that their obligations to protect and promote sustainable socio-economic development have application to transfers of conventional arms. The rigorous application of these commitments is required to ensure improved conditions for development on the ground. Dialogue between the authorising and recipient state is an important part of the transfer decision-making process and in ensuring that any arms transfer supports rather than undermines development.³

An ATT would not impede legal international transfers of arms i.e. that which is consistent with states' obligations under international law and national law.

The UN ATT process seeks to clarify and strengthen the relationship between national and international law. It would set clear parameters for legal international transfers of arms and would assist the identification and elimination of illicit transfers.

² For a full discussion of how to apply human rights standards to arms transfer decisions see <http://www.amnesty.org/en/library/info/ACT30/008/2008/en>

³ For a full discussion of how an ATT should seek to address the need to promote sustainable development see http://www.oxfam.org.uk/resources/policy/conflict_disasters/downloads/tb_practical_guide_arms_trade.pdf

SOME STATES SAY...

Any ATT will be based on agreement at the lowest common denominator and will be counterproductive.

Existing arms control mechanisms are already too complicated.

WE SAY...

The vast majority of states want to see an ATT that creates high global standards and not one that works to lower existing national standards.

The ATT should enshrine and reflect states' existing obligations under international law and other widely accepted norms of state behaviour thereby considerably strengthening international arms transfer controls. States would still be free to implement even higher standards of restraint should they wish.

The establishment of a single instrument that sets high common standards for international arms transfer control would simplify and clarify states' obligations. This would encourage greater responsibility and restraint in global arms transfers.

Some regional arms transfer control mechanisms have proved reasonably effective in terms of establishing norms of responsibility and restraint with regard to international arms transfers. Where mechanisms have had a reduced impact there are often wider issues at play, such as a lack of resources, capacity and expertise. An effective ATT would include mechanisms for capacity building and assistance and would support states in the implementation of their international arms transfer control commitments.

Inconsistencies between different regional and multilateral agreements in terms of content, interpretation and implementation are having a negative impact on their effectiveness. Indeed regional agreements can only have a limited impact on a trade that is essentially global in nature. By holding all states to the same high standards, an ATT that is based on states' obligations under international law and other widely accepted norms of state behaviour would help to reconcile differences between existing regional and multilateral agreements on conventional arms transfer control.

SOME STATES SAY... WE SAY...

We should improve existing systems, not create a new one.

An ATT without the support of the major arms exporting states will be worthless.

A global problem needs a global solution. Only a global Treaty can effectively tackle the problems of the unregulated arms trade.

To date, UN mechanisms for addressing the proliferation of conventional weapons have consisted of the 1991 UN Disarmament Commission Guidelines, the 1991 UN Register of Conventional Arms Transfers, the 2001 UN small arms Programme of Action and the implementation of selective UN arms embargoes. While all of these agreements are important in their own right none reflect the broad understanding of states' international responsibilities that has emerged in recent years. An ATT that is centred upon existing international law and widely accepted norms of state behaviour would support, reinforce and build on these existing UN instruments.

As momentum builds behind an ATT, more states are seeing the benefits of being involved in the process and are lending their support to the initiative. Seven out of the top ten major arms exporting states already support the establishment of an ATT.

Evidence suggests that creating an international norm helps to influence the behaviour of countries, even if they do not sign up to a particular treaty. For example, although the US has not acceded to the Mine Ban Treaty it has not used antipersonnel landmines since the treaty was signed.

As the momentum behind the ATT initiative has grown, a number of governments have changed or clarified their position and now support an ATT. There is still time for other governments to change their positions as work progresses; most governments will want to be part of the majority process.

A few states may be reluctant to accept their obligations to respect the UN Charter and other international law, including international human rights law and international humanitarian law, or to apply these explicitly to international transfers of conventional weapons and munitions. An ATT would clarify and reinforce the connection between states' existing legal responsibilities and arms transfers. All governments have an overriding interest in establishing a stable and secure international system that saves lives, protects livelihoods and responds to the basic rights and needs of the world's people.

SOME STATES SAY...

An ATT cannot possibly work when UN arms embargoes are persistently violated.

An ATT won't stop illegal traffickers diverting weapons from the licit to the illicit market.

WE SAY...

The absence of global standards for international arms transfer control has been a major reason behind the limited impact of many UN arms embargoes.

As a 2007 report⁴ by SIPRI concludes, the failure of UN arms embargoes points to the need for a coherent and effective system for international arms transfer control. Although a blunt instrument, arms embargoes can be appropriate in extreme situations. However there would be less need for the UN to impose arms embargoes if there was an internationally agreed set of legally binding standards for the control of all international arms transfers.

One reason why UN arms embargoes are breached is that many do not have a clearly defined scope. In most cases, there is insufficient detail regarding the weapons covered by the embargo and this prevents their consistent implementation by states. An ATT that includes a detailed list of military and security equipment, components, ammunition and related material, would represent a significant step towards closing the potential loopholes that exist in many UN arms embargoes.

An ATT would create a global legal framework for international arms transfers that would facilitate the identification of illicit transfers and the pursuit and prosecution of those who fuel the illicit trade.

Diversion of arms continues often as a direct result of the failure of states – either through lack of capacity or lack of care – to undertake adequate risk assessment during the transfer licensing process. Moreover, the failure of states to collate and exchange information on diversion risks means that many states are ignorant of the problems that exist while too many prove willing to turn a blind eye.

States need to remain vigilant to the activities of illegal traffickers. Much more could be done to restrict the scope for their operations. An ATT that includes a clear requirement for states to fully assess the potential for the diversion of arms transfers, and to refuse the transfer if there are substantial risks, would help to curtail this problem and prevent arms reaching unauthorised end-users.

⁴ *United Nations Arms Embargoes: Their Impact on Arms Flows and Target Behaviour*, SIPRI and the Uppsala University Special Program on the Implementation of Targeted Sanctions, pp. 51 http://books.sipri.org/product_info?c_product_id=356

SOME STATES SAY...

Any treaty that focuses on transfers of weapons and not on production discriminates against states that do not manufacture weapons.

The UN Register of Conventional Arms (UNRCA) is a good place to start in determining the scope of an ATT.

WE SAY...

An ATT would help end discriminatory practices by requiring all states to abide by the same standards, by reducing subjectivity in arms transfer decision-making and by providing a basis for increased dialogue between states involved in the authorisation of all aspects of international arms transfers.

Few states have ever been completely self-sufficient in terms of producing arms for their domestic requirements, while arms production is increasingly globalised through licensed production arrangements and the transfer of technology, expertise and component parts. So most states engage in some level of international arms trading and procure items in order to satisfy their need for the means of self-defence and law enforcement. The ATT would not interfere with this providing there is not a substantial risk that the arms internationally traded and procured would be used for serious violations of international law or would contribute to excessive or destabilising accumulations of arms.

There are too many gaps in the UNRCA categories – too many weapons would not be covered.

The UNRCA was developed following the 1991 Gulf War with the aim of introducing greater transparency into conventional arms transfers and to help prevent destabilising accumulations; its focus is primarily upon major conventional weapons systems that could be used to launch large scale offensive operations.

Today, the international security context is more varied and fragmented and the range of equipment that is used in regions of conflict and instability is much greater. The seven categories of major conventional weapons plus small arms and light weapons that are now included in the UNRCA omit an extensive range of military and security equipment – including many types of military aeroplanes, helicopters, vehicles and naval vessels, and some categories of ammunition – that are widely used in conflict and human rights crisis zones. Basing the scope of the ATT coverage on the UNRCA categories would leave large loopholes in the agreement which would seriously weaken its effectiveness and credibility.

SOME STATES SAY... WE SAY...

An ATT would not work because states have widely different capabilities for international arms transfer control.

A comprehensive ATT would provide a framework within which assistance could be given to states that require it to effectively control international arms transfers.

All states have the potential to be involved in the import, export, transit, transshipment or brokering of conventional arms and some may require technical, financial or other types of assistance for the development and implementation of effective international arms transfer controls. The development of a comprehensive ATT would provide a framework that makes the provision of appropriate assistance more, not less, likely.

The provision of assistance for the purposes of ATT implementation could take a variety of forms. For example, some states may require legal and technical assistance for the development of appropriate legislation, while some may require training or other types of assistance to boost the capacity of relevant government departments or agencies. In order that they may fully engage with the ATT process, states should identify and articulate their *specific* needs at the earliest opportunity. Dedicated treaty bodies, international organisations, states and non-governmental organisations (NGOs) could be tasked with providing assistance; those in a position to assist with the provision of resources and expertise would be expected to make this clear.

An ATT would be unenforceable.

Considerable experience already exists in relation to the development and implementation of compliance mechanisms under other multilateral regimes and treaties; states should draw upon this as the ATT is developed.⁵

As part of the ATT negotiations, states will need to decide how to identify and respond to cases of non-compliance. The ATT should include mechanisms that would encourage full compliance and help to build confidence in the effective implementation of the Treaty. Provision should be made for states to raise concerns over implementation either directly with each other or through a recognised body. Where concerns over compliance cannot be resolved by these means, the Treaty should include provision for impartial and transparent investigation of, and adjudication on, such matters. In order to deter persistent and flagrant violations, it may be considered necessary to include options for sanctions against parties that consistently disregard their obligations under the Treaty.

⁵ *Making it Work: Monitoring and verifying implementation of an Arms Trade Treaty*, Elizabeth Kirkham, Saferworld, 2008
http://www.saferworld.org.uk/publications.php/312/making_it_work

SOME STATES SAY...

An ATT would do nothing to prevent non-state actors (NSA) procuring weapons illegally.

WE SAY...

An effective ATT would prevent transfers of arms to unauthorised end-users.

The issue of how to prevent access to weapons by unauthorised NSA has been raised in a number of international fora in recent years; yet there has been no international agreement on how to address this issue. For those states that strictly oppose transfers of arms to unauthorised NSA the ATT should serve as an important means of achieving such goals since an ATT should be premised on transfers being authorised by all states with relevant jurisdiction in the matter.

Furthermore, an effective ATT should require that international arms transfers are not authorised where there are serious concerns about the capacity of the recipient to safeguard against the diversion of the weapons to unauthorised users or uses. As such, an ATT should help to prevent illegal acquisition of arms by NSA.

